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ACTION EUR-00

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INFO	LOG-00	NP-00	AMAD-00	CIAE-00	INL-00	DODE-00	DS-00
	EAP-00	OIGO-00	FBIE-00	UTED-00	FRB-00	H-00	TEDE-00
	INR-00	LAB-01	L-00	M-00	DCP-01	NSAE-00	TFBI-00
	SCT-00	SSO-00	SS-00	TEST-00	ASDS-00	FMP-00	DSCC-00
	PRM-00	DRL-00	G-00	SAS-00	/002W		

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P 071618Z NOV 03
 FM AMEMBASSY BERLIN
 TO SECSTATE WASHDC PRIORITY 7009
 INFO FRG COLLECTIVE
 EU MEMBER STATES
 DEPT OF JUSTICE WASHDC

UNCLAS BERLIN 004239

SENSITIVE

DEPT FOR EUR/AGS, EUR/PPD, S/CT, and L/LEI (KEN PROPP)
 DEPT OF JUSTICE FOR TERESA WALLBAUM

E.O. 12958: N/A
 TAGS: PTER, KJUS, PREL, GM, PGOV
 SUBJECT: TERRORISM: UPDATE ON TRIAL OF 9/11 SUSPECT MZOU DI

REF: HAMBURG 4058

 Summary

1. (SBU) At the trial of alleged 9/11 co-conspirator Mzoudi, a senior German intelligence official testified that members of the "Hamburg" cell did not plan the 9/11 attacks in the U.S., but instead were recruited by al-Qaeda in Afghanistan while in training. In response, the defense filed a motion to lift the arrest warrant and release the defendant, on the grounds that this testimony contradicted the indictment and the requirement of paragraph 129(a) of the Federal Criminal Code, which limits the offense of membership in a terrorist organization to those based in Germany. Although the court denied the motion, it is clear that the Mzoudi case presents a number of evidentiary problems that did not surface during the earlier trial of co-conspirator Motassadeq, who received a maximum sentence of fifteen-year imprisonment by the same court. Next week, "Der Spiegel" journalists will be asked to testify on their October 27 article, which cited "classified interviews" with detained Al-Qaeda members Ramzi

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Binalshibh and Mohammed Kahlid Sheikh conducted by U.S. officials. END SUMMARY

----- Background -----

2. (SBU) In the second trial of a September 11 terrorist trial worldwide, Abdelghani Mzoudi is charged in the Hamburg Higher Regional Court with two counts. The first count is membership in a terrorist organization under paragraph 129 (a) of the Federal Criminal Code, which limits the scope of this offense to membership in German-based terrorist organizations only. (Note: Only after 9/11 did enactment of 129 (b) in September 2002 criminalize membership in terrorist organizations outside of Germany. endnote) The second count is acting as an accessory in over 3,000 cases of murder by aiding and abetting the 9/11 attacks. The Federal Prosecutor is seeking to show that Mzoudi contributed to the attacks as an active member of a German terrorist group known as the "Hamburg cell" that had evolved under the leadership of suicide pilot Mohammed Atta. The prosecution's May 8 indictment charged that the "Hamburg cell" planned the 9/11 attacks in Germany well before Atta and other Hamburg cell members traveled to a terrorist training camp in Afghanistan late 1999. Last February, the same Hamburg court sentenced "Hamburg cell" member Mounir Motassadeq to a maximum term of fifteen years imprisonment on the same counts, i.e., membership in a Germany based terrorist organization and accessory to over 3,000 cases of murder.

----- Testimony of Senior Intel Official turnabout in the trial? -----

3. (U) According to press reports, on October 24, President of the Federal Office for the Protection of the Constitution Heinz Fromm testified that the 9/11 attacks were not planned in Hamburg as maintained by the prosecution, but in Afghanistan. According to Fromm, Khalid Sheikh Mohammed, who was never active in Germany, was the operational mastermind for planning the attacks, and that the "Hamburg cell" members were recruited for the attacks by al-Qaeda when training in a terrorist camp in Afghanistan late 1999.

4. (SBU) According to a USG source attending the trial, Fromm based his conclusion from various sources, including open sources his office considered "credible", such as the book "Masterminds of Terror" which expands on the interview

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of Bin-alshib by an al-Jazira reporter, as well as the 9/11 Congressional Report. Fromm's testimony immediately prompted the defense to move for suspending the arrest warrant on the grounds that Fromm's expert testimony clearly negated the basis of the indictment. The prosecution responded that there was no contradiction between the counts in the indictment and Fromm's testimony, since Fromm also stated that the Hamburg cell had decided in early 1999 before traveling to Afghanistan to actively support the Jihad.

5. (SBU) The court dismissed the defense motion, arguing that the legal requirements for an arrest warrant were met, i.e., a credible suspicion that he committed the offences as charged and that there were sufficient grounds for the

arrest. The court stated that previous evidence had shown that Mzoudi had maintained a long and close relationship with the suicide bombers, had promoted and supported the anti-American, anti-Jewish aims of the cell, and "most likely" had committed the crimes listed in the indictment. The court also cited the defendant as a flight risk.

----- Next Steps -----

6. (SBU) Almost all witnesses have been heard. Both sides anticipate final arguments as early as late November. Prosecutors have indicated to us that because of a lack of evidence they do not plan to indict any other suspected 9/11 co-conspirators from the "Hamburg cell."

7. (SBU) Meanwhile, the court has issued a subpoena for German journalists writing for "Der Spiegel" to appear in court as witnesses during the November 13 session of the trial. These journalists in their October 27 article in "Der Spiegel" cited "classified interviews" with detained al-Qaeda members Ramzi Binalshibh and Kahlid Sheikh Mohammed conducted by U.S. officials. Since journalists are exempt from the obligation to testify on the sources of their articles under the freedom of press principles, it is unlikely at this time, that their testimony will reveal anything of significance in the trial. Their lawyers have already indicated that the journalists would invoke their professional privilege to decline to reveal sources.

----- Comment -----

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8. (SBU) Prosecutors are confident of a conviction on the second count of accessory to murder, but are less sure about the lesser charge of membership in a terrorist organization under 129(a) in light Fromm's testimony and the absence of other evidence. Prosecutors have noted that the evidence in this case is not as comprehensive as in the previous trial against Motassadeq. They note that most of the evidence in this case is circumstantial rather than showing direct participation in terrorist activities of the "Hamburg cell." One result could be a sentence less than the maximum of fifteen years in prison, despite the prosecution's tough stance in this trial.

COATS

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